Filed 3/11/16 In re G.C. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re G.C., a Person Coming Under the Juvenile Court Law.	B266505 (Los Angeles County Super. Ct. No. CK76047)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. FERNANDO C., Defendant and Appellant.	

APPEAL from the orders of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Affirmed.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Fernando C. (father) appeals from a jurisdictional order declaring his daughters wards of the court under Welfare and Institutions Code section 300, subdivision (b),[1] as well as an order requiring specified services. Father contends substantial evidence does not support the court's sole jurisdictional finding against him. He also contends there was no basis for the court to order enhancement services. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has six children, all of whom were living with mother and her boyfriend, C.R., when the current petition was filed in early 2015. At that time, the two oldest children were 13 and 14 years old; their father has not appeared in the lower court proceeding. The next two in birth order are father's children: twelve-year-old G.C. and five-year-old J.S. C.R. is the father of mother's two youngest children.

In early 2009, the dependency court sustained a petition filed by the Los Angeles County Department of Children and Family Services (Department) on behalf of G.C. and her two older half siblings, based in part on domestic violence between father and mother. An additional petition filed with respect to J.S., born August 2009, was later dismissed, with mother receiving voluntary maintenance services. Around the same time, father was sentenced to six years in prison for a rape conviction and the court terminated father's reunification services. Father has an extensive criminal history, with multiple convictions and bench warrants for crimes ranging from vandalism to felony possession of a controlled substance to attempted murder. According to mother, father was incarcerated when J.S. was born, and he did not have a relationship with the children.

In 2015, the Department filed the current petition with respect to G.C., J.S., and their older half siblings based on domestic violence between mother and C.R., as well as

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[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

drug abuse by C.R.[2] Consistent with the Department's recommendation, mother retained custody of all six children and has provided good care, even for a period when they were homeless. The Department noted that all the children were well-groomed and well-behaved, although G.C. had started acting out and challenging mother's authority.

After locating and interviewing father, the Department filed a first amended petition, adding allegations that the children were at risk of harm based on father's criminal history and a 2013 diagnosis of schizophrenia.

At the jurisdictional hearing on June 24, 2015, mother and C.R. each waived their right to contest the two counts against them based on domestic violence. Father's attorney argued that the count based on father's mental illness should be dismissed because the Department had not shown any nexus between father's diagnosis and risk of harm to the children. The Department asked the court to find that the burden of proof had been met for that count. The court sustained the two counts alleging that the children were at risk of harm based on domestic violence between mother and C.R., as well as the count based on father's schizophrenia diagnosis, and dismissed all remaining counts.

The court noted father was receiving enhancement services and ordered him to a full drug program with random testing, a 12-step program, as well as programs on parenting and domestic violence. Father appealed.

DISCUSSION

Jurisdictional Findings

Father contends there was insufficient evidence to support the court's jurisdictional finding that G.C. and J.S. were children described by subdivision (b) of section 300, based on his schizophrenia diagnosis. Because father raises no challenge to the court's jurisdictional findings based on domestic violence between mother and C.R.,

[2] The younger half siblings, C.R.'s children, were the subject of a separate petition.

and mother has not appealed, we dismiss this portion of father's appeal, declining to exercise our discretion to address the sufficiency of evidence to support a single jurisdictional finding where jurisdiction over the children would still be warranted on other grounds. (*In re Briana V.* (2015) 236 Cal.App.4th 297, 308-311; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1490-1492.)

"'[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent.' [Citations.] The child thus remains a dependent of the juvenile court." (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1161.)

In response to our invitation to address the question of justiciability in separate briefing, father concedes that the court will retain jurisdiction over G.C. and J.S. based on mother's conduct, regardless of the outcome on father's appeal. Father asks this court to exercise its discretion and reverse the jurisdictional finding against him because of the prejudice he will suffer from having a sustained dependency finding against him and the accompanying requirement to participate in social services. He compares his situation to that of the father in *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*). In *Drake M.*, the court determined the difference between father being an "offending" parent versus a "non-offending" parent was enough prejudice to warrant the exercise of discretion. The court reasoned, "Such a distinction may have far-reaching implications with respect to future dependency proceedings in this case and father's parental rights." (*Id.* at p. 763.) Like father here, the father in *Drake M.* did not challenge jurisdictional findings based on mother's role, but only challenged the court's exercise of jurisdiction based on his use of medical marijuana. The child was 14 months old, well-fed, and well-cared for, and father was employed. The Department reported that father appeared capable of providing for the child's basic needs, and at disposition, the court had ordered the child to remain placed with father. (*Id.* at pp. 758, 760-762.)

We do not read *Drake M.*, *supra*, 211 Cal.App.4th at page 763, as holding as a matter of law that the characterization of a parent as "offending" renders any challenge to a jurisdictional finding justiciable. *Drake M.* recognizes that courts retain discretion to review jurisdictional findings, which necessarily means the decision turns on the facts of each individual case. Here, recognizing that father is already subject to sustained findings based on the 2009 dependency proceeding, and that his relationship with his daughters has been distant at best, we decline to exercise our discretion.

Enhancement Services

"'The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.' [Citation.]" (*In re A.E.* (2008) 168 Cal.App.4th 1, 4.) A court abuses its discretion when it makes a determination that is "'"arbitrary, capricious, or patently absurd."'" (*In re Mark V.* (1986) 177 Cal.App.3d 754, 759.)

The court has authority to direct any reasonable orders to the parents of minors over whom the court has found jurisdiction. (§ 362, subd. (d).) "The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." (*Ibid*.)

Father argues that because none of the services ordered by the court address his mental illness, even if he were to meet all of the court's directives, his mental illness would still pose an obstacle to reunification. Without delving into why the court may have referred to the services it was ordering the Department to provide as "enhancement services," rather than reunification services,[3] we find no abuse of discretion. In 2009, the

[3] When a child is removed from the custody of one parent and placed in the custody of the other parent, the court has discretion to order family maintenance or reunification services for one or both parents. (§ 361.2, subd. (b)(3).) The court may

dependency court sustained a jurisdictional finding based on domestic violence between mother and father. Again in 2015, the court found the children to be at risk of harm based on exposure to domestic violence between mother and C.R. While it is true there was no evidence of continuing domestic violence between mother and father, it is neither speculative nor absurd for a court to conclude that the children's continued safety would be better protected if mother, father, and C.R. all completed programs designed to help them navigate challenging relationships, with each other and their children. Similarly, in light of father's extensive criminal history, which includes past convictions for intoxication and possession of controlled substances, it is not absurd to infer that if father remained drug-free, he would be better able to assist in maintaining a clean and safe environment for his children.

DISPOSITION

The jurisdictional findings and dispositional orders are affirmed.

KRIEGLER, J.

I concur:

TURNER, P. J.

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also order "enhancement services" to the parent not retaining custody. Such services are "not designed to reunify the child with that parent, but instead to enhance the child's relationship with that parent by requiring that parent to address the issues that brought the child before the court." (*In re A.C.* (2008) 169 Cal.App.4th 636, 642, fn. 5.)

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BAKER, J., Dissenting

The majority declines to exercise its discretion to correct a clear and uncontested error, a jurisdictional finding that Fernando C. (Father) has a mental illness that purportedly endangers his children, because it believes the error is inconsequential. Perhaps it is true that the erroneously sustained jurisdictional finding against Father will cause him to suffer no adverse consequences—time will tell. But a decision to let stand a conceded and easily corrected error is problematic in my view, particularly if such a result were replicated in case after case.

A reviewing court may affirm a finding of jurisdiction over a minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) Thus, it is well established that "[a] jurisdictional finding good against one parent is good against both" because the child is a dependent if the actions of either parent bring the child under the relevant statutory dependency definitions. (*In re Briana V.* (2015) 236 Cal.App.4th 297, 308; accord, *In re I.J.* (2013) 56 Cal.4th 766, 773.) That is a sensible rule, and one that courts should not hesitate to apply in appropriate cases. But it is equally well established that there are circumstances in which courts will generally exercise their discretion to reach the merits of a jurisdictional finding alleged to be erroneous no matter how well supported the allegations are against the other parent.

The case often cited in describing those circumstances is *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*). The scenario presented in that case, like this one, was a dependency petition with unchallenged allegations against the mother sufficient to establish jurisdiction over the child and an additional jurisdictional finding against the father that he disputed as unsupported by sufficient evidence. (*Id.* at p. 762.) Justice Croskey's unanimous opinion for the court held "we generally will exercise our

discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal . . . (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings . . . or (3) 'could have other consequences for [the appellant], beyond jurisdiction' . . . ." (*Id.* at pp. 762-763.)

To *Drake M.*'s three criteria, I would add a fourth: we should generally reach the merits of a contention of jurisdictional error where the error plainly appears and is uncontested.[1] There are at least two reasons why. First, predicting the future is a tricky business. Even where a court rightly believes an error is unlikely to result in future prejudice to a parent, rarely will we be able to confidently say the possibility of such prejudice is entirely non-existent. And where there is such a possibility, even if it is indeed low, the cost of correcting a clear and uncontested error is lower still. Thus, in such situations, we need not proceed on the belief our prejudice assessment will prove correct; we should simply correct the error and remove all doubt. Second, when the parties agree the juvenile court erred, and where the record establishes the parties are correct in their assessment, a decision to nonetheless disregard the error sends the wrong message. Here, it signals less care in drafting and adjudicating petition allegations against one parent is needed where there are sound allegations against the other parent. While I agree we should not reverse a determination that a child comes within the jurisdiction of the juvenile court when there is an adequate basis to support that determination, neither should we incentivize an approach that increases the chances that allegations against a parent without a proper basis will be sustained.

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[1] It is perhaps unnecessary to add to the *Drake M.* framework as I propose because this case arguably fits within the third criterion that court identified: a finding that can have consequences for a parent beyond jurisdiction. As explained *post*, the juvenile court sustained an allegation that father suffers from mental illness to such a degree that he is unable to care for his children. That finding may well have unforeseen consequences that I do not here fully catalog or decide. (See, e.g., Prob. Code, §§ 810, 811 [statutory provisions relevant to determining whether a person who has a mental disorder has the capacity to contract and perform other actions].)

With these principles in mind, I would reverse the jurisdictional finding against Father in this case while ultimately holding that his children were properly found to be dependent children under Welfare and Institutions Code section 300. I briefly elaborate.

DCFS initially filed a dependency petition with allegations against only G.C.'s mother (and her male companion). Later, in a First Amended Petition, DCFS added count b-4 against Father that alleged as follows, in relevant part: "[Father] has mental and emotional problems which renders the father unable to provide regular care of the children. The father was diagnosed in 2013 with schizophrenia. Such mental and emotional condition on the part of the father endangers the children's physical and emotional health and safety and places the children at risk of physical and emotional harm and damage." This allegation against Father was sustained by the juvenile court at DCFS's urging, but it is plainly defective.[2] There is no evidence in the record that his schizophrenia endangered his children in any way. (*In re James R., Jr.* (2009) 176 Cal.App.4th 129, 136; *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318 ["The Department has the burden of showing specifically how the minors have been or will be harmed and harm may not be presumed from the mere fact of mental illness of a parent"].) To the contrary, the only evidence recounted in DCFS reports indicated Father was seeing a psychiatrist, taking medication as prescribed, and feeling better.

Father thereafter noticed this appeal from the juvenile court's jurisdictional finding. To its credit, DCFS conceded on appeal that the finding was erroneous and informed this court it accordingly would refrain from filing a respondent's brief. (Deputy County Counsel Jessica S. Mitchell, letter to Court of Appeal, Dec. 16, 2015 ["[T]he record provides no nexus that father's mental health issues placed the children at risk of harm so conceding father's jurisdictional challenge would be warranted"].) The majority, however, declined to accept the concession and instead requested briefing on whether we could decline to address Father's appeal of the jurisdictional finding because there were

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[2] Although the court found, by sustaining count b-4 as pled, that Father suffered from a mental illness that endangered G.C. and J.S., the court did not order any services targeted at treating or improving his mental health.

sufficient findings against the children's mother. Father opposed disregarding that portion of his appeal, but that is the upshot of the majority's opinion—even though it too does not defend the erroneous jurisdictional finding.

Rather than spending nearly two pages developing a rationale for declining to reach the jurisdictional issue, I submit we can and should correct the undisputed error here in three sentences: "Father contends there was insufficient evidence to support the court's jurisdictional finding that G.C. and J.S. were children described by subdivision (b) of section 300, based on his schizophrenia diagnosis. DCFS concedes there is no evidence in the record to support a finding that Father's schizophrenia endangered the children. We agree, and we therefore reverse the jurisdictional finding against Father."

BAKER, J.